BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	**CC Docket No. 98-94**
1998 Biennial Regulatory Review—	)	
Testing New Technology	)	

COMMENTS OF INTERMEDIA COMMUNICATIONS INC.

INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), by its undersigned counsel and pursuant to the Commission's *Notice of Inquiry*,[1] hereby respectfully submits its comments in this proceeding. As more fully discussed below, Intermedia supports the Commission's initiatives, subject only to the paramount condition that they do not interfere either with the protections afforded consumers and competitive local exchange carriers ("CLECs") under the Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 (the "Communications Act"), or with the market-opening statutory obligations imposed upon the incumbent local exchange carriers ("ILECs") by the Communications Act.

[1] *1998 Biennial Review—Testing New Technology*, CC Docket No. 98-94, FCC 98-118, Notice of Inquiry (rel. June 11, 1998) (*Notice of Inquiry*).

I. BACKGROUND AND INTRODUCTION

Intermedia is nation's largest independent CLEC, providing integrated telecommunications solutions to business and government customers. These solutions include voice and data, local and long distance, and advanced broadband services throughout the United States. As a major provider of digital broadband services, as well as a consumer of the ILECs' advanced telecommunications services and facilities, Intermedia is critically interested in this proceeding.

Intermedia commends the Commission for its efforts to undertake initiatives in order to promote technology testing. Intermedia concurs with the Commission's observation that experiments, including technical and market trials, are a critical part of the process of introducing new services and, hence, should be encouraged. Similarly, Intermedia supports the Commission's overarching goal of ensuring that regulations do not create unnecessary disincentives for firms that are engaged in developing new technologies. While Intermedia unequivocally agrees that it is important to create an environment in which new and innovative technologies are encouraged, Intermedia submits that an equally paramount task is to protect the interests of the consumers as well as the carriers who compete with the proponents of these new technologies. Thus, any regulatory initiatives the Commission ultimately adopts and implements should strike a balance between fostering the development and testing of advanced telecommunications technology *and* maintaining the procompetitive policies of the Communications Act.

II. THE COMMISSION SHOULD NOT FORBEAR FROM THE REQUIREMENTS OF SECTIONS 251, 252, AND 271

The Commission should insist that any services and facilities offered by the ILECs as part of a legitimate test or experiment are subject to the requirements of Sections 251, 252, and 271. Intermedia supports and applauds the Commission's unequivocal statement in this *Notice of Inquiry* that "Section 10(d) expressly prohibits the Commission from exercising forbearance with respect to the requirements of Section 251(c) and 271, unless the Commission determines that those requirements have been fully implemented."[2] This definitive statement on the Commission's forbearance authority creates a welcome level of certainty, particularly in light of the recent flurry of Bell Operating Company ("BOC") petitions for relief from the mandates of the Communications Act.[3]

In this connection, it is critical that the Commission also clarify that ILEC subsidiaries that now exist or may exist in the future, that deploy broadband and other advanced digital facilities—as part of a test or experiment, or otherwise—are also fully subject to the requirements of Sections 251, 252, and, where applicable, 271. This means that any experimental services and facilities these subsidiaries deploy must be available to the CLECs for purposes of interconnection, resale, and unbundled access, among other things. This would address any concerns that the ILECs, in particular the BOCs, could hide behind the guise of tests and experiments to circumvent their obligations under the Communications Act.

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2 *Notice of Inquiry*, at ¶ 31.

3 *See, e.g., Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-11; *Petition of Ameritech Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-32; *Petition of U S WEST Corporation for Relief from*
(continued...)

III. THE PROPONENT OF THE TEST MUST MEET DEFINED CONDITIONS

Intermedia further proposes that ILECs publish information about their market trials, including but not limited to, duration, cost allocation,[4] treatment of end users, and notification to competitors.[5] In particular, carriers engaging in tests or experiments should be required to clearly identify—in their tariffs, price lists, websites, and other publicly available documents—the nature of the trial or experiment, the services and facilities that are involved, the dates on which the trial starts and ends, the geographic scope of the test (e.g., the specific exchange and Local Access Transport Areas), whether the services and/or facilities are being tested as wholesale or retail offerings, and any other information deemed relevant by the Commission. This information is necessary to determine if the proposed trial is reasonable in scope, purpose, and duration. In this regard, Intermedia submits that trials be limited to no more than ninety (90) days, subject to further extension for good cause on application by the proponent of the test. This 90-day period is consistent with the approach taken by the Commission in the *Local Competition Order*, in which the Commission concluded that promotions of up to *90 days* have significantly lower anticompetitive potential.[6]

(...continued)
Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26.

4 Intermedia concurs with the Commission that costs of experiments, including market trials, should be accounted for and allocated in accordance with the Commission's existing accounting and cost allocation rules. *See Notice of Inquiry*, at ¶ 22.

5 *See generally Notice of Inquiry*, at ¶ 17.

6 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499, 15970 (1996) (*Local Competition Order*).

Moreover, subscribers who have signed up for the test should remain subscribers only for the limited duration of the test. Once the test is terminated, the subscribers should be released from their obligations, and should then be permitted to renew their subscription (at their discretion) once the experimental service becomes fully commercial. In no instance should term commitments or termination liabilities be imposed. This would prevent carriers from signing up test customers and converting them to full-fledged commercial customers at a later point, thereby effectively precluding other carriers from targeting these potential customers. In addition, such restrictions would dilute any marketing and competitive advantages that inure to the proponent of the test as a result of being able to offer the products or services first, albeit on an experimental basis.

Finally, competing carriers must be given an opportunity to participate in the trial. Such participation by competing carriers would benefit both the proponent and competing carriers through mutual exchange of technical, operational, and other critical data demonstrating the success or failure of the test. Moreover, participation by competing carriers at this stage of the process would help flesh out potential problems with, for example, interconnection, interoperability, operations support systems access, and similar technical concerns. In this regard, Intermedia believes that proponents of the tests must give competing carriers prior notice of planned trials through Commission filings, trade publications of general circulation, and similar documents, preferably 90 days prior to the start of the test. In this way, competing carriers who wish to participate in the test can make appropriate plans regarding possible participation in the trials. These requirements are not unreasonable and, indeed, the Commission

previously imposed the same requirements on the BOCs with respect to market trials of enhanced services.[7]

IV. CONCLUSION

Intermedia commends the Commission for proposing procompetitive initiatives in this *Notice of Inquiry*. Intermedia fully concurs with the Commission that deregulatory initiatives that result in promoting experiments involving new technology ultimately will benefit consumers of telecommunications services. Intermedia submits that these consumer benefits can be obtained by creating a regulatory environment that *both* fosters experimentation *and* maintains appropriate protections for consumers and competing carriers.

Respectfully submitted,

INTERMEDIA COMMUNICATIONS INC.

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[7] *See BOC Notices of Compliance with CEI Waiver Requirements for Market Trials of Enhanced Services*, CC Docket No. 88-616, DA 88-2058, Memorandum Opinion and Order, 4 FCC Rcd 1266, 1270 (1988).

CERTIFICATE OF SERVICE

I, Enrico C. Soriano, hereby certify that I have, on this 21st day of July, 1998, caused to be served a copy of the foregoing Comments of Intermedia Communications Inc. upon the following individuals, by hand-delivery:

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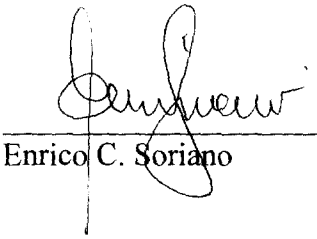

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